

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

(1) MID-SOUTH IRON WORKERS WELFARE )  
PLAN; (2) IRON WORKERS MID SOUTH )  
PENSION FUND; (3) OKLAHOMA IRON )  
WORKERS' DIRECT CONTRIBUTION PLAN )  
AND TRUST; (4) OKLAHOMA IRON WORKERS' )  
APPRENTICESHIP & TRAINING FUND LOCALS )  
48 and 584; )  
  )  
  )  
Plaintiffs, )  
  )  
  )  
v. ) Case No. CIV-19-338-R  
  )  
  )  
(1) SOUTHERN STEEL AND CONSTRUCTION, )  
LLC, )  
  )  
  )  
Defendant. )

**COMPLAINT**

Come now Plaintiffs, the Mid-South Iron Workers Welfare Plan (hereinafter referred to as the “Welfare Plan”), the Iron Workers Mid South Pension Fund (hereinafter referred to as the “Pension Fund”), the Oklahoma Iron Workers’ Direct Contribution Plan and Trust (hereinafter referred to as the “Direct Contribution Plan”), Oklahoma Iron Workers Apprenticeship & Training Funds Locals 48 and 584 (hereinafter referred to as the “Apprenticeship Fund”) (collectively, hereinafter referred to as “Plaintiffs”), through undersigned counsel, assert their Complaint against Defendant Southern Steel and Construction, LLC, as follows:

## **JURISDICTION AND VENUE**

1. This is an action brought pursuant to §§ 502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1132 and 1145, and § 301 of the Labor Management Relations Act, 29 U.S.C. § 185.

2. Jurisdiction and venue are conferred on this Court by 28 U.S.C. § 1331 and 29 U.S.C. §§ 185(a), 1132(a),(e), and (f).

## **PARTIES**

3. Plaintiff, Welfare Plan, is an "employee welfare benefit plan" as defined in § 3(1) of ERISA, as amended, 29 U.S.C. § 1002(1), established by the Iron Workers and employers in an industry affecting commerce, whose employees are members of that union, for the purposes of providing medical benefits to the employees. The Welfare Plan is authorized to sue in its own name by § 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). The Welfare Plan is administered in Oklahoma City, Oklahoma.

4. Plaintiff, Iron Workers Mid-South Pension Fund, is an "employee benefit pension plan" defined in § 3(2)(A)(i) of ERISA, as amended, 29 U.S.C. § 1002(2)(A)(i), established by the Iron Workers and employers in an industry affecting commerce, whose employees are members of that union, for the purposes of providing retirement income to the employees. The Pension Fund is authorized to sue in its own name by § 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). The Pension Fund is administered in Metairie, Louisiana and is located at 2450 Severn Avenue, Suite 517, Metairie, Louisiana 70001.

5. Plaintiff, Direct Contribution Plan & Trust, is a defined contribution plan as

defined in ERISA, established by the Iron Workers and employers in an industry affecting commerce, whose employees are members of that union, for the purposes of providing benefits to the employees. The Direct Contribution Plan is authorized to sue in its own name by § 502(d)(1) of ERISA, 29 U.S.C. § 1132(d)(1). The Direct Contribution Plan is administered in Oklahoma City, Oklahoma.

6. Plaintiff, Apprenticeship Funds are pooled funds as allowed by Section 302 of the Labor Management Relations Act. 29 U.S.C. § 186. The Apprenticeship & Training Funds are administered in Oklahoma City, Oklahoma.

7. Defendant, Southern Steel and Construction, LLC, is a Tennessee limited liability company (hereinafter referred to as "the Contractor") and is a private employer. The Contractor is party to a Collective Bargaining Agreement with the Iron Workers Locals 48 and 584. The Agreement binds the Contractor to the Agreements and Declarations of Trust for the Welfare Plan, Direct Contribution Plan, Apprenticeship Fund and Pension Fund which require the Contractor to submit monthly remittance reports and pay monthly contributions to the Welfare Plan, the Direct Contribution Plan, the Apprenticeship Fund and the Pension Fund. The Contractor transacts business in the State of Oklahoma. The Contractor may be served by delivering a copy of the Complaint to its registered agent for service of process, J. Warren Brock, 339 West Olive Avenue, Memphis, Tennessee 38106-3907.

## **FIRST CAUSE OF ACTION**

8. Plaintiffs hereby incorporate, by reference, paragraphs 1 through 7, inclusive.

9. Plaintiffs require contributing employers to file monthly remittance reports.

The employers calculate the contributions they owe to the Plaintiffs from these reports and are required to remit said amounts with their reports.

10. The Contractor has failed to submit monthly contributions and/or remittance reports as required by the Collective Bargaining Agreement.

11. The Plaintiffs are authorized and empowered under the Trust Agreement and duly adopted rules and regulations to conduct an audit, including to examine and copy the payroll books and records of any contributing employer to determine whether the employer is accurately complying with the contribution obligations established under the Collective Bargaining Agreement.

12. Plaintiffs are entitled to the unpaid contributions under §§ 502 and 515 of ERISA, 29 U.S.C. §§ 1132 and 1145 and § 301 of the Labor Management Relations Act, 29 U.S.C. § 185. In addition to the unpaid contributions, Plaintiffs are entitled to the following, pursuant to § 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2):

- (a) Interest on the unpaid contributions;
- (b) Liquidated damages;
- (c) Reasonable attorneys' fees and costs of litigation; and
- (d) Any other legal or equitable relief this court deems appropriate.

13. Plaintiffs are also entitled to recover all costs incurred in exacting compliance

with the applicable agreements in procuring an audit of the employer's payroll records, costs include cost of the actual audit and attorneys' fees and costs, and any additional costs of litigation.

14. Plaintiffs advised the Contractor that it had failed to submit all contributions due and owing and made amicable demand on the Contractor to submit to an audit of its books and records.

15. The Contractor has violated its obligations to Plaintiffs under applicable law by refusing to satisfy their request to promptly remit all delinquent remittance reports and contributions. Due to the described refusal and breach of agreement by the Contractor, Plaintiffs are unable to determine the benefits accrued by employees of such who have worked and are now working in covered employment with the employer.

16. Plaintiffs are without an adequate remedy at law and will suffer immediate, continuing and irreparable injury, loss and damage unless the Contractor is ordered to specifically perform all of its obligations owed to them and is restrained from continuing to refuse to perform.

WHEREFORE, Plaintiffs request judgment against Contractor as follows: (a) an order compelling Contractor to submit to an audit by Plaintiffs' auditors for the period January 2015 through the present; (b) a judgment for all contributions found to be due Plaintiffs together with interest and liquidated damages; (c) Plaintiffs be awarded their reasonable attorneys' fees and costs as provided in Section 502(g)(2) of the ERISA, 29 U.S.C. § 1132(g)(2); and (d) for such further relief as is deemed just and equitable.

/s/ W. Brant Warrick

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**CERTIFICATE OF SERVICE**

I hereby certify that on April, \_\_\_\_\_, 2019, I electronically transmitted the forgoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

None

I hereby certify that on April \_\_\_\_\_, 2019, I served the foregoing document by:

- U.S. Postal Service
- Courier Service
- In-Person-Delivery
- E-Mail

on the following, who are not registered participants of the ECF System:

Secretary of Labor  
S-2018 Frances Perkins Building  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Secretary of Treasury  
3330 Main Treasury Building  
Washington, D.C. 20220

/s/ W. Brant Warrick  
W. Brant Warrick